

Date of Hearing: April 12, 2010

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Joe Coto, Chair

AB 1773 (Mendoza) – As Introduced: February 9, 2010

SUBJECT: State Fire Marshal: inspections and licensing

SUMMARY: Reinstates provisions in the Health and Safety Code which will authorize the Office of the State Fire Marshal (OSFM) to impose a specified monetary civil penalty in lieu of suspending a private business operating license or certification. Specifically, this bill:

- 1) Authorizes the State Fire Marshall or his or her designee to stay the suspension of a license or certificate of registration in specified instances on condition that its holder pay a specified monetary penalty and incur no other cause for disciplinary action, as specified.
- 2) Deposits those penalties in the State Fire Marshal Licensing and Certification Fund.
- 3) Requires the State Fire Marshall to make specified data relating to this bill available to the public.

EXISTING LAW provides for the licensing by the State Fire Marshall of persons to engage in various activities relating to the sale or use of fireworks, and the servicing of portable fire extinguishers and automatic extinguisher systems.

FISCAL EFFECT: Unknown

COMMENTS: This bill proposes to reinstate provisions of the Health and Safety Code that authorized the OSFM to levy a monetary penalty in lieu of suspension. Specifically, this bill would reinstate Health and Safety Code sections 12606.1 (fireworks license suspensions), 13188.4 (fire extinguisher license and/or certification suspensions), and 13197.6 (automatic fire extinguishing system license suspensions). The author states that the three programs affected by this bill are (1) the Fireworks Program which is mandated under Part 2 "Fireworks and Pyrotechnic Devices" commencing with Section 12500 of the Health and Safety Code; (2) the Portable and Fire Extinguisher Program which is mandated under Chapter 1.5 commencing Section 13160 of the Health and Safety Code; and (3) the Automatic Extinguishing System Program which is mandated under Chapter 1.8 commencing with Section 13195 of the Health and Safety Code.

According to information provided by this bill's sponsor, during the time these sections were in statute they were effective and served both the industry and the OSFM in a positive manner.

Background. The OSFM Fire Engineering Division is responsible for administering a wide range of fire safety licensing , certification programs, and performing engineering functions affecting consumer services, product evaluation, approval and listings. The OSFM Fire Engineering Division is also responsible for conducting investigations related to those programs.

According to the author, prior to January 1, 2008, the OSFM was authorized to levy a monetary penalty in lieu of administrative license suspensions (AB 2401, Harman, Chapter 424, Statutes of 2004). During the period prior to this policy's sunset date of January 1, 2008, there were 51 cases of violation. The author states that all cases except one were settled under the existing provision, without significant fiscal impact to the state. The author also says that due to the sunset provisions in the law, the OSFM may no longer use monetary fines as an enforcement mechanism.

When the OSFM suspends a license or certification, the licensee or certificate holder is required to stop working. In order to ensure compliance, the OSFM has to redirect staff from other critical functions to periodically monitor the individual and/or business. The author states that this has proven to be time consuming, costly, and hinders the Deputy's ability to perform other critical programs.

Sunset clause. According to information from the bill's sponsor, a sunset clause was included in AB 2401 based on the initial concerns of the affected industry, the California Association of Life Safety and Fire Equipment (CAL SAFE). CAL SAFE contacted then-Assembly Member Harman to ensure that the OSFM would use this provision as an enforcement tool and not as a means of revenue generation, and the sunset date was seen as a means to ensure this.

The bill's sponsor says, "Though this provision had proven to be effective, industry was not successful in their attempts to have the sunset extended." The policy contained in AB 2401 sunset on January 1, 2008.

Due to the sunset contained in AB 2401, OSFM is faced with the dilemma of either suspending a license/certification, at a significant cost to both the business and the state, or opting to take no action and potentially allowing infractions to continue. The author states that this bill will give the OSFM the authority to levy monetary penalties without unnecessarily suspending a license or certificate.

Prior legislation. AB 2401 (Harman), Chapter 424, Statutes of 2004, authorizes the OSFM to impose a specified monetary penalty in lieu of suspending the license or certificate of individuals or businesses that violated laws.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Life Safety and Fire Equipment
Department of Forestry and Fire Protection (CAL FIRE) (sponsor)
FireMaster
Jorgensen Company
Orange County Fire Protection
Solon Fire Control

Opposition

None on file

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